

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ICI USA LLC d/b/a Tovolo,	)	Case No. _____
	)	
Plaintiff,	)	<b>COMPLAINT FOR TRADE DRESS</b>
	)	<b>INFRINGEMENT AND VIOLATION</b>
v.	)	<b>OF THE WASHINGTON</b>
	)	<b>CONSUMER PROTECTION ACT</b>
GADPRO, INC.,	)	
	)	<b>JURY DEMAND</b>
Defendant.	)	

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ICI USA LLC hereby states its complaint against GadPro, Inc. as follows:

**I. PARTIES**

1. Plaintiff ICI USA LLC ("ICI") is a Washington corporation with its principal place of business in Seattle, Washington. ICI develops unique, innovative products that solve everyday problems, including sphere ice molds.

2. Upon information and belief, Defendant GadPro, Inc. ("GadPro") is California corporation with its principal place of business in San Jose, California. Upon information and belief, GadPro sells kitchen utensils and gadgets on Amazon.com, including ice sphere molds.

**II. JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and § 1332. This Court has supplemental jurisdiction under 28 U.S.C. § 1367(a) because all claims in suit are so related that they form part of the same case or

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LANE POWELL pc  
1420 FIFTH AVENUE, SUITE 4200  
P.O. BOX 91302  
SEATTLE, WA 98111-9402  
206.223.7000 FAX: 206.223.7107

1 controversy under Article III of the United States Constitution. Venue is proper  
2 under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise  
3 to the claim occurred in this district and the property that is the subject of this  
4 action, namely, the Plaintiff's sphere ice mold, was created, designed, and sold in  
5 this district.

### 6 **III. FACTUAL ALLEGATIONS**

#### 7 **A. ICI Has Sold Over One Million of Its Innovative and Well-Known** 8 **Sphere Ice Molds.**

9 4. ICI designs innovative new products that surprise and delight the  
10 user. ICI has built a team of experts dedicated to each phase of product  
11 development including marketers, industrial and graphic designers, and  
12 packaging experts. ICI's clients include Bed Bath & Beyond, Crate & Barrel,  
13 Pier 1 Imports, Sur La Table, Macy's, and Williams Sonoma among others, all of  
14 whom sell the ICI products.

15 5. One of ICI's well known product lines is the Tovolo product line.  
16 ICI uses the Tovolo brand to market utensils, kitchen gadgets, and beverage  
17 devices including tea infusers, ice cube trays, wine bottle holders, crock book  
18 holders, spreaders, scoops, pizza wheels, and ice sphere molds, among many  
19 other successful products.

20 6. The Tovolo products all have a certain look and feel in terms of  
21 design. The Tovolo products incorporate bright colors; high-quality, sturdy-  
22 looking plastics; professional quality-looking designs; and unique shapes. The  
23 designs among products look similar and help customers identify products that  
24 are part of the Tovolo line of products.

25 7. The Tovolo product line includes a product called Sphere Ice Molds,  
26 which ICI sells as a two-mold set. The innovative and clever design produces a  
27 2.5 inch ice sphere, which melts slowly when added to a drink.

1           8.     ICI sells the Tovolo sphere ice molds at Amazon.com among other  
2 places. The product received 4.6 out of 5 stars on Amazon after being reviewed  
3 by over 1400 customers. The Tovolo sphere ice mold is a best seller on  
4 Amazon.com and among the Top 100 products in Kitchen & Dining. The product  
5 ranks #6 out of all the ice cube molds and trays sold on Amazon.com.

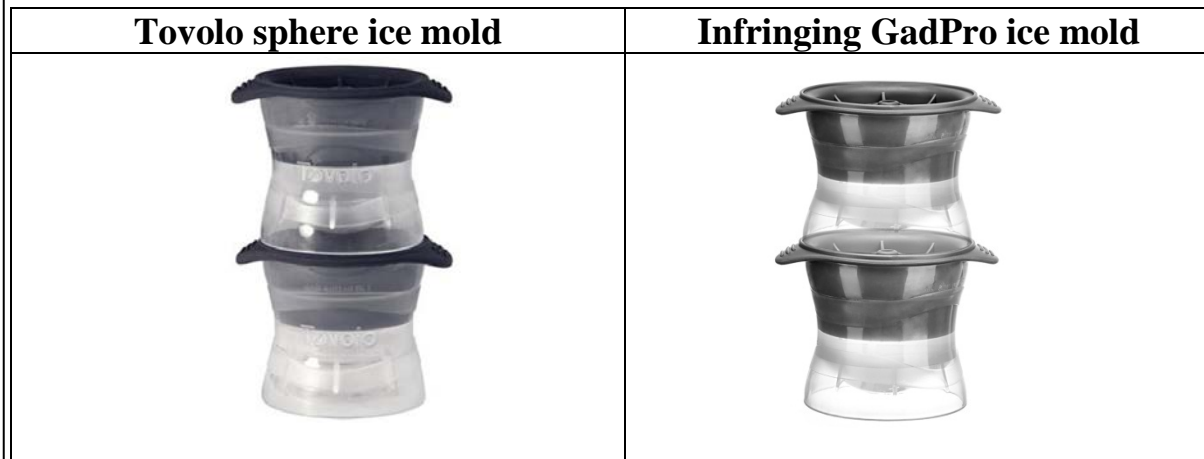
6           9.     In addition, ICI sells the Tovolo sphere ice mold through Bed Bath  
7 & Beyond, Sur La Table, and Williams Sonoma in addition to other fine retailers.

8           10.    In total, ICI has sold over one million Tovolo sphere ice molds  
9 through its various retailers.

10          11.    Since its creation, the Tovolo sphere ice mold has featured a unique  
11 design and combination of design elements. This design and trade dress includes  
12 a clear plastic mold base with two swirled-looking lines with the Tovolo  
13 trademark in the middle and a gray plastic mold top with grooves, lines, ridges,  
14 and a wagon wheel design. The colors and design elements help the mold look  
15 ready for professional kitchen use. None of these design elements are functional  
16 or necessary to the mold in any manner; rather, they add a unique touch similar to  
17 all of the other Tovolo products. Because these design elements fit in the family  
18 of the other Tovolo products, they help to signify the source of the products.

19 **B.     GadPro's Ice Sphere Mold Infringes the Tovolo Product.**

20          12.    In September 2014, ICI became aware that a retailer called GadPro  
21 was selling ice sphere mold products through Amazon.com that copied the trade  
22 dress of the Tovolo sphere ice molds. ICI could see the infringing trade dress by  
23 looking at the pictures of GadPro's products online. Pictures of the Tovolo  
24 sphere ice molds and the infringing GadPro ice mold demonstrate the obvious  
25 trade dress infringement. The only perceptible difference between the molds is  
26 that the Tovolo product features the "Tovolo" trademark.



13. The GadPro products feature infringing trade dress and design elements and are advertised in a manner likely to confuse and deceive customers.

#### IV. CLAIMS FOR RELIEF

##### FIRST CAUSE OF ACTION – TRADE DRESS INFRINGEMENT UNDER 15 U.S.C. § 1125(a)

14. ICI repeats, realleges, and incorporates all of the above allegations.

15. ICI owns a protectable trade dress in the clearly articulated design elements and combination of elements in the Tovolo sphere ice mold, including a clear plastic mold base that features two swirled-looking lines with the Tovolo trademark in the middle and a gray plastic mold top with grooves, lines, ridges, and a wagon wheel design.

16. None of the trade dress in the Tovolo sphere ice mold is functional. Rather, the design elements and combination thereof were selected to fit in with the other products in Tovolo's kitchen and beverage lines and to designate Tovolo and ICI as the source. Indeed, the Tovolo trademark is incorporated into the trade dress of the product as another way to indicate the product source.

17. The trade dress in the Tovolo sphere ice mold is inherently distinctive or has acquired secondary meaning through ICI's sales and marketing

1 efforts of the mold as described above. The product design and features are well  
2 known in all of the markets in which ICI sells the products.

3 18. GadPro's ice sphere mold design and trade dress creates a likelihood  
4 of confusion as to source, sponsorship, affiliation, connection, or association  
5 because the GadPro trade dress copies all of the non-functional trade dress  
6 elements of the Tovolo sphere ice mold product. Customers are likely to be  
7 confused or deceived as to the origination of the GadPro product or are likely to  
8 think that the GadPro product is somehow connected to or associated with ICI  
9 and Tovolo.

10 22. The general impression made by the GadPro product upon the eye of  
11 the ordinary purchaser or user is deceiving given the similarity to the Tovolo  
12 trade dress. The multiplicity of similarities between the products constitutes trade  
13 dress infringement.

14 23. GadPro's conduct violates section 1125(a) and has damaged ICI.

15 **SECOND CAUSE OF ACTION – VIOLATION OF THE WASHINGTON**  
16 **CONSUMER PROTECTION ACT UNDER RCW 19.86**

17 24. ICI repeats, realleges, and incorporates all of the above allegations.

18 25. GadPro committed an unfair and deceptive act in trade and  
19 commerce when it copied and incorporated into its product design ICI's trade  
20 dress and later offered a competing and nearly identical product for sale as  
21 GadPro's own. GadPro's conduct violates the Lanham Act and is deceptive and  
22 unfair on its face.

23 26. GadPro's actions have the capacity to materially deceive a  
24 substantial portion of the public because GadPro has made products with and  
25 continues to incorporate confusing and deceptive trade dress copied directly from  
26 ICI's product. Incorporating this trade dress and offering confusingly similar  
27 products for sale through the same marketing channels that ICI uses will lead  
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1 consumers to believe that (1) GadPro owns the infringing trade dress and its use  
 2 is authorized; (2) GadPro designed the trade dress; or (3) GadPro is connected or  
 3 affiliated with ICI and Tovolo. GadPro's actions violate the Lanham Act, a  
 4 statute that has a public interest impact.

5 27. GadPro's unfair and deceptive actions have injured ICI in its  
 6 business and property. GadPro's unauthorized incorporation, use, and sale of  
 7 ICI's trade dress and products with that trade dress both devalues ICI's products  
 8 and trade dress and undermines the reputation and goodwill of ICI's business  
 9 while allowing GadPro to profit at the same time. GadPro's actions also deprived  
 10 ICI of its property and/or intellectual property rights.

11 28. There is a causal link between GadPro's unfair and deceptive actions  
 12 and the injury ICI has suffered because GadPro manufactured and offered for sale  
 13 products incorporating ICI's proprietary trade dress without ICI's authorization  
 14 and with disregard for its reputation and rights. GadPro has been unjustly  
 15 enriched by the offer for sale of products incorporating trade dress that does not  
 16 belong to GadPro and has impaired ICI's ability to control its own product line.

17 29. GadPro's conduct constitutes a violation of the Washington  
 18 Consumer Protection Act and has damaged ICI.

## 19 **V. PRAYER FOR RELIEF**

20 WHEREFORE, plaintiff ICI prays for relief as follows:

- 21 1. For a judgment against GadPro;
- 22 2. For an injunction against GadPro that prohibits GadPro from  
 23 manufacturing, selling, incorporating, or otherwise using ICI's  
 24 proprietary trade dress.
- 25 3. For damages against GadPro in an amount to be determined at trial;
- 26 4. For reasonable attorneys' fees and the costs of pursuing ICI's claims  
 27 as may be allowed by law; and;

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LANE POWELL PC  
 1420 FIFTH AVENUE, SUITE 4200  
 P.O. BOX 91302  
 SEATTLE, WA 98111-9402  
 206.223.7000 FAX: 206.223.7107

LANE POWELL PC

By /s/ Tiffany Scott Connors  
Tiffany Scott Connors  
WSBA No. 41740  
Lane Powell PC  
1420 5<sup>th</sup> Avenue, Suite 4200  
P.O. Box 91302  
Seattle, WA 98111  
Telephone: 206.223.7267  
Facsimile: 206.223.7107

Attorneys for ICI USA LLC